

**Dissenting Views  
H.R. 5018  
American Fisheries Management and Marine Life Enhancement Act**

**We support reauthorization of the Magnuson-Stevens Fisheries Conservation Management Act (Magnuson Act) but strongly oppose H.R. 5018. The Joint Oceans Commission Initiative (JOCI), which represents the combined recommendations of the U.S. Commission on Ocean Policy (USCOP) and the Pew Oceans Commission, expressed similar concerns in letters dated May 16, 2006, and June 7, 2006. (See attachments.)**

**FAILURE TO CURB OVERFISHING**

**Last reauthorized in 1996 to promote sustainable fisheries in our oceans, the Magnuson Act mandates the end to overfishing in stocks designated as overfished, and requires the rebuilding of overfished stocks in as short a time as possible but in general within 10 years. The law defines overfishing and overfished as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce maximum sustainable yield on a continuing basis.**

**The National Marine Fisheries Service has identified 74 depleted fish stocks in need of rebuilding. Of these 74 stocks, rebuilding plans have been approved for 67 fish stocks. Although the requirements to rebuild fisheries were enacted nine years ago, only three fish stocks (Atlantic sea scallop, Pacific whiting and Pacific lingcod) have recovered. For 48 percent of stocks with rebuilding plans, fish population levels are increasing. However, overfishing is still occurring for 45 percent of the stocks with rebuilding plans in place. Studies have shown that the clearest cause of the lack of progress in rebuilding is the failure of many plans to reduce exploitation sufficiently to end overfishing.<sup>1</sup>**

**Notwithstanding the poor fish stock recovery rate, H.R. 5018 would undermine the law's conservation provisions and make it even more difficult and costly to rebuild marine fisheries by authorizing exemptions to the rebuilding requirements. While the bill would require annual catch limits, there is no mechanism in H.R. 5018 to enforce these limits.**

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<sup>1</sup>Rosenberg, Andrew A., Swasey, Jill H., and Bowman, Margaret. "Rebuilding US fisheries: progress and problems." *Frontiers in Ecology* 2006: 4(7).

## **UNDERCUTTING THE REQUIREMENT TO REBUILD FISHERIES.**

The Magnuson Act requires preparation of a rebuilding plan for an overfished fishery. The rebuilding time frame is to be as short as possible but no longer than 10 year years, except in cases where the biology of the stock or other environmental conditions dictate otherwise.

Despite the flexibility already in the law, H.R. 5018 would authorize a series of loopholes large enough to pilot a fishing trawler through, and would enable the 10-year deadline to be extended indefinitely. Under H.R. 5018, overfishing could continue indefinitely if the Secretary makes any of the following determinations: the cause of the fishery decline is outside the Council's jurisdiction, rebuilding cannot be effective only by limiting fishing activities, one or more stocks in a multi species fishery need more than 10 years to recover, or the rebuilding targets are changed.

"If fishery productivity is reduced due to factors other than fishing, fishing pressure must still be reduced. It is not a matter of assigning blame, but of adjusting fishing pressure to a level that the resource can sustain," wrote the JOCI in its May 16, 2006, letter.

The loopholes would exacerbate the effects of overfishing, making it more difficult, perhaps impossible, to produce sustainable fisheries to support the fishing industry. If H.R. 5018 is enacted, the fishermen of today could continue fishing or even overfishing in the short term, but it is unlikely that fisheries experiencing over harvesting could sustain future generations of fishermen.

"Continuing to extend the rebuilding time frame makes it far more difficult to rebuild overall, causes even greater economic and social impacts, and means an ongoing loss of resources," the JOCI said in its May 16, 2006, letter. This provision is not in S. 2012, a bill passed by the Senate to reauthorize the Magnuson-Stevens Act.

Ranking Democrat Nick J. Rahall and Representative Jim Saxton (R-NJ) filed amendments to strike the rebuilding language in Section 11. The amendment failed by a vote of 18 to 17.

## **FAILURE TO ASSURE BALANCED AND ACCOUNTABLE REGIONAL FISHERY MANAGEMENT COUNCILS (COUNCILS)**

The Magnuson Act established eight regional Councils which play a major role in managing our nation's fisheries. The USCOP made important recommendations to improve the operations of the Councils, including some that are in H.R. 5018. These include payment to members serving on the Councils' Science and Statistical

Committees (SSC) and the requirement that the SSCs recommend “acceptable biological catch” and maximum sustainable yield levels.

While we support the SSCs role in establishing catch levels, the term “acceptable biological catch” is not defined in H.R. 5018 and should be. An enforcement mechanism is also needed to ensure that the catch level is not exceeded. H.R. 5018 would authorize Councils to use harvest control methods instead of catch limits, but these methods are difficult to measure and are not as effective as catch limits in managing sustainable fisheries.

Other USCOP and JOCI recommendations pertaining to appointments to the Councils and training for Council members are not in H.R. 5018. “As it stands, the fishing industry representatives, who make up the majority of the regional fishery management council members, may tend to favor economic interests over the long-term sustainability of the stocks,” the USCOP’s report said. Of the 72 council members nationwide in 2005, only 10 were not from the commercial or recreational fishing sectors.

In an attempt to address this concern, H.R. 5018 would authorize governors to nominate Council members from academia and the public interest sector, but governors would not be required to recommend a broad slate of candidates, including two representatives from the general public, as the USCOP recommended.

While H.R. 5018 would direct the Secretary to provide training to Council members, the bill fails to establish a deadline for Council members to complete the course, and would not prevent council members from voting prior to completing the course. The USCOP recommended both of these changes to the Magnuson Act.

We are troubled that the bill contains absolutely no financial disclosure requirements for certain SSC members. Council members are required to abide by financial disclosure regulations in 50 CFR 600.235 and Federal employees must comply with 18 U.S.C. 208, but SSC members who are academicians or independent experts would be exempt from both. There is nothing to prevent SSC members, who also work for the fishing industry, from recommending catch levels that benefit their employers but do not promote stock sustainability.

To get around a potential conflict of interest, the USCOP recommended that the Administrator of the National Oceanic and Atmospheric Administration ultimately approve the SSC appointments, but H.R. 5018 ignores this recommendation and retains the Councils’ exclusive authority to make SSC appointments. An alternative solution would be to require that SSC members not have a direct financial interest or be employed by any person with a direct financial interest in any fishery.

## **Eliminating Compliance with the National Environmental Policy Act (NEPA)**

H.R. 5018 continues the Republican crusade to weaken NEPA with a cascade of rifle-shot exemptions. In this case, H.R. 5018 would create a unique, dual system for fisheries management where the Secretary of Commerce would be authorized to waive NEPA by finding that compliance with the Magnuson Act is “substantially equivalent” to NEPA. This new system would reduce public involvement, and curb alternatives and cumulative impacts analyses.

Ironically, supporters of this exemption sometimes claim that the application of NEPA is redundant to the requirements in the Magnuson Act, and other times claim that the two laws are at odds with one another.

The Council on Environmental Quality’s General Counsel and the Assistant Administrator for Fisheries at the Department of Commerce testified that NEPA and the Magnuson Act are not in conflict. Neither the Magnuson Act nor H.R. 5018 require a broad analysis of the impacts that an action may have on the marine environment. The mere inclusion of Section 10 in H.R. 5018 is a tacit admission that the Magnuson Act lacks the level of analysis found in NEPA, otherwise it would be unnecessary.

The imitation NEPA requirements which H.R. 5018 would add to the Magnuson Act are insufficient. Section 10(a) in H.R. 5018 would direct the Councils to provide information on “efforts to study, develop and describe” alternatives. While this language mimics NEPA, a formal process, where alternative actions are identified and analyzed, is not required under H.R. 5018.

Section 10(b) in H.R. 5018 mentions cumulative impact analysis but requires it only within the narrow confines of a fishery management plan. Without the broader perspective NEPA requires, Councils could consider cumulative impacts of an action on one species in a fishery while ignoring the impacts of that action on other species and other aspects of the marine environment. If this language were to become law, the unintended result would be greater confusion and more litigation since there is no precedent for this approach.

In its June 7, 2006, letter the JOCI said Section 10 “would seriously compromise the integrity of NEPA” and asked that the provision be removed from H.R. 5018. The Bush Administration did not request nor does it endorse the extraordinary powers granted to the Secretary of Commerce in Section 10. Moreover, this provision is not in S. 2012, the Magnuson reauthorization bill approved by the Senate.

Ranking Democrat Nick J. Rahall and Congressman Raul Grijalva offered an

amendment in Committee to strike this provision. The amendment failed by voice vote. A second degree amendment which would have deleted the offensive NEPA waiver language in H.R. 5018, and in its place directed the Secretary to update and revise procedures to integrate compliance with NEPA and the Magnuson Act, failed by a vote of 18 to 23.

## **AUTHORIZING PERMANENT PRIVATIZATION OF PUBLIC FISHERY RESOURCES**

Often called an individual fishing quota, a Limited Access Privilege Program (LAPP) is a permit issued to individuals or an entity to harvest a specified amount of the total allowable catch of a fishery. H.R. 5018 would authorize councils to create a LAPP, subject to approval by the Secretary of Commerce.

If implemented properly, LAPPs can be a management tool with the potential to improve conservation and promote fishermen safety, but there is no guarantee that LAPPs authorized in H.R. 5018 would meet these goals. In its June 7, 2006, letter, the JOCI recommended that quota shared be assigned for a limited time period. Yet, under H.R. 5018, LAPP holders could retain their permits forever.

In other areas within the Resources Committee's jurisdiction, such as contracting for timber harvest, and delivery of water and power, as well as issuing permits to graze animals on public lands, there are limitations in law or regulation on the amount of time public resources may be used for private benefit. Opponents of terms for a LAPP argue that fishermen will not be able to secure business loans without a long-term permit. Similar arguments were made by irrigation districts when contract terms for delivery of Bureau of Reclamation water were proposed. Yet farmers are still able to secure loans notwithstanding the limitations Congress enacted.

While some fishermen support LAPPs, particularly those holding a quota, not all do. H.R. 5018 would grant New England fishermen authority to hold a referendum on whether or not a LAPP should be issued in their region, and would require a 2/3 vote in support to approve a LAPP. Vessel captains and crew members would be eligible to participate in the referendum. Fishermen in other parts of the country would not be granted the same rights. In our view, all regions should be required to comply with the same rules.

We also oppose provisions in H.R. 5018 which would exempt those LAPPS that are being developed but have not yet been approved by the Secretary from having to comply with H.R. 5018. The new rules established in H.R. 5018 should apply to all LAPPS.

## **CONCLUSION**

**We support a reauthorization bill that will enable fisheries to rebuild, but H.R. 5018 would undermine this goal by allowing overfishing to continue indefinitely and would limit analysis of environmental impacts. Instead of enhancing the conservation provisions in the Magnuson Act for future generations, H.R. 5018 would lead to depleted fisheries, thereby threatening the \$60 billion contribution our fisheries make to the U.S. economy, and jobs for more than half a million Americans. We strongly oppose H.R. 5018.**



The Honorable J. Dennis Hastert  
The Honorable Nancy Pelosi  
United States House of Representatives  
Washington, DC 20515

June 7, 2006

Dear Mr. Speaker and Minority Leader Pelosi:

The Joint Ocean Commission Initiative, which represents the views of the members of the U.S. Commission on Ocean Policy and the Pew Oceans Commission, offers the following recommendations for enhancing H.R. 5018, legislation to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, which is scheduled for consideration on the House floor in the near future.

We greatly appreciate the commitment of House Majority and Minority Leadership to improving our nation's management of its fisheries, which is vitally important to the health of our economy and our oceans. We also applaud the work of the House Resources Committee, whose bill incorporates, in whole or in part, a number of the two Commissions' key recommendations, including, but not limited to, provisions that:

- Improve science-based management
- Promote cooperative research
- Authorize the development of ecosystem-based fishery management plans, regional stock assessments, and regional ecosystem research
- Promote the collection of socioeconomic data
- Establish a council member training course
- Authorize the establishment of Limited Access Privilege Programs
- Endorse joint fisheries enforcement
- Authorize the use of vessel monitoring systems

However, there are a number of provisions either contained in or missing from the legislation that are of concern to the Joint Initiative. We urge the House to take this opportunity to further strengthen the bill by addressing these provisions so that H.R. 5018 more closely tracks the recommendations made by the two Commissions.

Before discussing these provisions, we would like to clarify that the basis for the Joint Ocean Commission Initiative's comments are a set of fundamental principles that are articulated in both Commission reports and that we believe should ground all ocean policy reform (see enclosed statement of principles). These principles promote an ecosystem-based management

approach, a stronger reliance on science, greater participation and support of fishermen and the general public, an enhanced stewardship ethic, and adequate funding to support fishery management and recovery. We believe effective fisheries management legislation should incorporate all of these principles and look forward to continuing to work with both the House and Senate to put as many as possible in the final Magnuson-Stevens Act reauthorization bill.

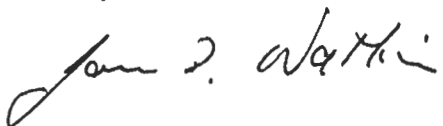
The Joint Initiative respectfully requests that House leaders support the following changes to H.R. 5018:

- Modify bill language to prevent overfishing by ensuring accountability for and compliance with Science and Statistical Committee-recommended allowable biological catch levels. Such a measure is needed to reinforce the Council's responsibility for abiding by annual harvest levels, and if necessary, compensate within a fixed period of time for overharvest in a given year.
- Eliminate new exceptions to current rebuilding provisions that would allow stock rebuilding time frames to be extended beyond the ten years, delaying the recovery of many depleted fisheries.
- Remove the language exempting federal fishery management from compliance with the National Environmental Policy Act (NEPA). We appreciate the desire to harmonize Magnuson-Stevens Act and NEPA requirements and timelines, and we recognize that an improved regime would facilitate better adaptive management. However, we feel that granting the Secretary of Commerce the authority to issue a NEPA consistency determination for Fishery Management Plans or amendments would seriously compromise the integrity of NEPA and, if extended to other laws, would result in greater inconsistencies in natural resource management policies.
- Clarify that access to publicly owned fisheries resources under Dedicated Access Privileges or Limited Access Programs are a privilege by requiring periodic reviews of the plans and assigning quota share for a limited time period.
- Expand upon the provision allowing greater opportunity for public representation on Regional Fishery Management Councils by requiring the Governors to submit the name of individuals representing the broader public interest in addition to those from the fishing industry. Such an action would address long-standing concerns regarding the dominant role of fishing industry representatives in the development of the Council's recommendations.
- Enhance the requirement for training for new Council members by tying it to their voting privileges. Fisheries management is highly complex, and the decisions made by the Councils have significant economic ramifications. Thus, member training should be mandated.



We commend you for your efforts to undertake Magnuson-Stevens Act reauthorization in the 109<sup>th</sup> Congress. The Magnuson-Stevens Act is the cornerstone of our fisheries management regime. Its regional management process, reliance on strong science and public participation, and call for transparency of the information upon which management decisions are based are central to its effectiveness. Enhancing these elements during its reauthorization is crucial and long overdue. We look forward to working with you and your staff on passage of H.R. 5018 so that it can fulfill the principles the Joint Ocean Commission Initiative believes are essential to fisheries management reform.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Watkins".

James D. Watkins  
Admiral, U.S. Navy (Retired)  
Chairman, U.S. Commission on Ocean Policy

A handwritten signature in black ink, appearing to read "Leon E. Panetta".

The Honorable Leon E. Panetta  
Chair, Pew Oceans Commission

Cc: The Honorable John A. Boehner  
The Honorable Steny Hoyer  
The Honorable Richard W. Pombo  
The Honorable Nick Rahall



The Honorable Richard Pombo  
Chairman, House Committee on Resources  
2411 Rayburn House Office Building  
Washington, DC 20515

May 16, 2006

Dear Chairman Pombo:

The Joint Ocean Commission Initiative has identified fisheries management reform and, more specifically, reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as one of its top priorities. We have been encouraged by the hard work that both the House and the Senate have dedicated to this issue during the 109<sup>th</sup> Congress. While leaders on Capitol Hill have articulated various thoughts on MSA reauthorization, the Joint Ocean Commission Initiative is committed to a set of fundamental principles that it believes should ground all ocean policy reform (enclosed).

We are encouraged to see elements of the Joint Initiative's principles addressed in H.R. 5018, the American Fisheries Management and Marine Life Improvement Act. Below we highlight key provisions we are pleased to see included in the Committee's bill, identify opportunities for the Committee to further strengthen some of these provisions, and express our serious reservations over a few provisions that we feel should be removed from the bill.

We start by applauding the bill's requirement for the Secretary to establish a peer review process to evaluate the scientific information used by the Regional Fishery Management Councils (Councils), underscoring the need for good science to drive the fishery management process. This valuable section could be enhanced by providing more guidance regarding the standards and criteria used in the peer review process, while also clarifying the public's role in reviewing and commenting on this information.

The bill also mandates the Science and Statistical Committees (SSCs) to recommend acceptable biological catch levels and requires the Councils to adopt harvest levels that do not exceed the recommended levels. This requirement represents a big step toward fulfilling the Commissions' recommendations but could be strengthened by clarifying the meaning of the "acceptable" biological catch, removing the option allowing "other annual harvest effort control limits" as part of this provision, and adding language that will ensure compliance with these limits. Setting annual catch levels is a means of ensuring that overfishing is ended, and deducting overages from subsequent years is an accountability provision. In effect, the actual catch (including discards) can be compared to the catch limit as a performance measure of the effectiveness of management. Setting an annual catch limit does not preclude management measures that regulate fishery inputs, such as effort controls, closed areas, and gear

requirements. These management methods can be fully employed, but the catch limit ensures that the output from the fishery meets conservation goals. In this context, it is not appropriate to have annual effort control limits as an alternative to catch limits in the requirements.

We were also pleased to see the provision mandating that financial support be provided for nongovernmental SSC members. This beneficial change will help to ensure greater participation and more effective review of fisheries data by experts in the scientific community. The Committee should also consider expanding opportunities for greater public representation on the Council by requiring the Governors to submit a broad slate of candidates, including two representatives from the general public.

The Joint Initiative notes that H.R. 5018 promotes the use of cooperative enforcement agreements, requires training for new Council members within six months of their appointment (which should be tied to their voting privileges), supports the use of Vessel Monitoring Systems, and the collection of socioeconomic data collection. These are all important steps toward the development of a system that more fully incorporates fishermen into the management process, makes the difficult job of enforcement more efficient, and allows for more informed decision making by Council members, particularly in the difficult matter of balancing economic and ecologic objectives.

The bill's support for use of limited access privileges (LAPs) and clarification of the need for national standards to guide the development of these programs are encouraging. LAPs represent an effective management tool that should be available to the Councils; however, the bill should strengthen this provision by clarifying that LAPs are a privilege by requiring periodic reviews of the plans and assigning quota share for a limited time period. The bill should also clarify the need for full public discussion and consultation with all affected stakeholders and interested parties in the development of LAP programs.

The transition toward an ecosystem-based management approach is a principle that the Joint Initiative believes to be extremely important. While it is encouraging to see language in the bill supporting further research into the state of science regarding the integration of ecosystem considerations into fisheries management, the development of regional research plans, and regional stock assessments, we would like to see the Committee make a further commitment toward managing fisheries in a broader context. The bill should explicitly encourage the Councils to support a transition toward an ecosystem-based management approach, with the objective of moving towards the development of fishery ecosystem plans. Such an approach would promote managing fisheries within the broader context of regional marine ecosystems, which would improve managers' ability to account for and address cumulative effects of fishing and nonfishing activities that impact the functioning of the ecosystem, the health of fish stocks, their prey, and important habitats. Commercial and recreational fishing are the major extractive activities impacting the health and productivity of living marine resources and marine habitats in state and federal waters. The reauthorization of the MSA provides Congress with a unique

opportunity to demonstrate its recognition of the need to transition toward a more sustainable management strategy for the long-term ecologic and economic health of the industry.

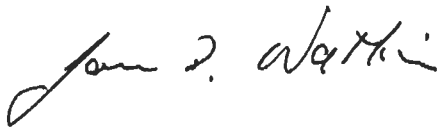
The Joint Initiative would also like to express serious reservations with a few proposed revisions to the MSA contained in H.R. 5018, including changes to requirements to comply with the National Environmental Policy Act (NEPA) and coordination with the National Marine Sanctuaries Act. While the Commissions recognized and recommended the need for better coordination and integration of ocean-related statutes, we do not feel that the partial integration of NEPA provisions into the MSA and the delegation of Secretarial authority to make a NEPA consistency determination are appropriate strategies to address this problem. NEPA's role is to ensure careful and full consideration of the environmental impacts of all classes of activities and their alternatives. Allowing the Secretary to make a determination that MSA-related actions are consistent with NEPA will inevitably lead to similar requests by other industries. Such a process would seriously compromise the integrity of NEPA and would increase, not decrease, inconsistency in natural resource management policies. We appreciate the desire to harmonize MSA and NEPA requirements and timelines, and recognize that an improved regime would facilitate better adaptive management. However, these desires must be balanced with the larger need to fully understand, reconcile and balance fishing's impact on the ecosystem, which is the primary role of the NEPA process.

We are also concerned about the provision that would impose MSA requirements on fishing activities within the confines of national marine sanctuaries. We fully support the MSA's fundamental principles of full and open public participation process, its grounding in the use of best available science to justify management decisions, and the need for activities in sanctuaries to respect explicit statutory prohibitions related to fishing that are established by Congress in the MSA or other legislation. However, we do not think that applying the MSA's guiding principle, which includes promoting the full utilization of fisheries, is always appropriate within sanctuaries, given the special recognition granted to sanctuaries and their resources. This matter should be debated and addressed during deliberations to reauthorize the National Marine Sanctuaries Act.

Finally, the bill's provisions for rebuilding fish stocks are also of concern. The bill describes many new instances in which the stock rebuilding time frames could be extended beyond the ten years called for in the MSA. If fishery productivity is reduced due to factors other than fishing, fishing pressure must still be reduced. It is not a matter of assigning blame, but of adjusting fishing pressure to a level that the resource can sustain. Continuing to extend the rebuilding timeframe makes it far more difficult to rebuild overall, causes even greater economic and social impacts, and means an ongoing loss of resources. The collapse and delayed recovery of New England groundfish fisheries, such as Gulf of Maine cod, illustrates the problems resulting from continued delays in implementing strong rebuilding measures, requiring increasingly severe economic impacts as stock biomass is depleted.

We commend you for your efforts to undertake Magnuson-Stevens reauthorization in the 109<sup>th</sup> Congress. The Magnuson-Stevens Act is the cornerstone of our fisheries management regime. Its regional management process, reliance on strong science and public participation, and call for transparency of the information upon which management decisions are based are central to its effectiveness. Enhancing these elements during its reauthorization is crucial and long overdue. We look forward to working with you and your staff on H.R. 5018 so that it can fulfill the principles that the Joint Ocean Commission Initiative believes are essential to fisheries management reform.

Sincerely,



James D. Watkins  
Admiral, U.S. Navy (Retired)  
Chairman, U.S. Commission on Ocean Policy



The Honorable Leon E. Panetta  
Chair, Pew Oceans Commission

  
NICK J. RAHALL, II

  
GEORGE MILLER

  
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DALE KILDEE

  
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TOM UDALL